IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7558 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI ARAKKAL, PARTNER OF M/S GEOTEX A PARTNERSHIP FIRM

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7558 of 2002

MR DR BHATT for Petitioner No. 1

MR MA BUKHARI Ld. APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/01/2003

C.A.V. JUDGEMENT

1. This is a petition under Section 482 of the Criminal Procedure Code (for short "the Code") for quashing and setting aside the Criminal Case No.1312 of 2002 pending before the learned Metropolitan Magistrate, Court No.16 at Ahmedabad for the offence punishable under Section 420 of the Indian Penal Code, in the alternative under Section 406 read with Section 114 of the Indian Penal Code.

2. The second respondent, herein, preferred the aforesaid Criminal Case before the aforesaid Court on the following set of facts.

2.1 That the said complainant was dealing in wholesale business in cloths at Ahmedabad in the name of M/s. Girishkumar Jawaharlal and he claimed to be the proprietor thereof. It has been alleged in the complaint that the petitioner, herein, original accused no.1 in the said Criminal Case, has been dealing in his business at Thrissur (Kerala State). That the second accused is working as a broker in cloth business and, therefore, the second accused had introduced the present petitioner to the said complainant. That thereafter, two accused used to come to the second respondent for the purchase of cloths and accordingly, cloths were sold to them on different dates in different quantity. That ultimately an amount of Rs.75,225/- was due to the second respondent by the two accused persons. That bills were issued accordingly but, ultimately they did not pay the said amount. The contesting respondent apprehended that it was a matter of cheating and misappropriation and, therefore, a complaint was filed by the second respondent against the said two accused for the said offences, stating that the total amount due was Rs.75,225/- and it was not being paid by the said two accused to the second respondent and, thereby they committed the said offence.

2.2 The petitioner herein is the accused no.1 in the said case and he has preferred this petition before this Court, stating that there is a civil dispute between the parties and that the present petitioner has issued certain post dated cheques to the second respondent with an understanding between both that the said amount was being paid to the second respondent by way of full and final satisfaction of the dues against the petitioner. That the second respondent had accepted those cheques and had encashed them on the aforesaid footing and understanding. That thereafter, there was no question of making more payment to the second respondent. That the aforesaid compliant has been filed at distant place from the place of the petitioner with a view to see that the

present petitioner is put to harassment and is compelled to make the payment to the contesting respondent though the contesting respondent is not entitled to the same. That therefore, it is an abuse of the process of the Court, and the petitioner therefore prays that the complaint as aforesaid be quashed.

3. On receiving the complaint, rule was issued and it was duly served. However, the contesting respondent did find it proper to appear before the Court and contest the petition.

On behalf of State, Mr. M.A.Bukhari, learned APP has appeared and has accepted the notice of rule. I have heard learned advocate for the petitioner and the learned APP for respondent no.1 - State, since there is no appearance on behalf of respondent no.2.

4. Learned advocate for the petitioner as well as learned APP have taken me through the complaint and correspondence between the parties. On going through the same, it is found that it is a clear case of sale and purchase of goods on credit. The records show that some goods were purchased by the accused persons and some amount was also paid. The notice dated 14.6.2001 (at page-16) shows that certain amount was due to the second respondent by the present petitioner.

However, the reply to the said notice has been placed at page-19 which is dated 25.6.2001. There, the petitioner has made the thing clear that there was an agreement between the parties for payment of dues and the petitioner had issued post dated cheques towards the full and final settlement of the dues. That thereafter, nothing was due and the second respondent was not entitled to any other amount since he had accepted those post dated cheques, and had encashed the same on an understanding that the cheques were received by him as a full and final satisfaction of the entire dues. There are further notice correspondence also.

5. On the basis of the above complaint, it is clear that there is a civil dispute between the parties which can be safely resolved through the agency of a Civil Court. It is apparently clear that the second respondent has also filed Summary Civil Suit No.723 of 2002 before the City Civil Court at Ahmedabad which further shows that parties are at civil dispute. The amount claimed in the civil suit is also a subject mater of dispute in the present complaint also.

6. Learned APP also agrees that it is simply a civil dispute which is sought to be culminated in a criminal proceeding. He therefore supports the arguments of the learned advocate for the petitioner as there is a civil dispute, the criminal complaint cannot proceed ahead.

On a careful perusal of the complaint and other documents on record, I am of the view that the civil dispute between the parties out weighs the criminal dispute between them and, therefore, the second respondent cannot be permitted to proceed with the complaint in question against the petitioner. In other words, since there is a civil dispute between the parties, no offence, as alleged, can be said to have been made out on a bare reading of a complaint in light of the background of other material on record. Consequently, when the complaint cannot proceed ahead, it is required to be quashed holding that there is a civil dispute between the parties and the parties are at liberty to resolve the same through the appropriate agency. It is more so when the second respondent has already filed a suit before a Civil Court for getting the decree of the principal amount as well as the amount of interest.

6. In view of the above, I am of the view that this is a fit case for exercise of powers under Section 482 of the Code for quashing the criminal proceedings since it appears to be the abuse of the process of the Court.

7. For the foregoing reasons, this petition is allowed. Criminal Case No.1312 of 2002 pending before the learned Metropolitan Magistrate, Court No.16 at Ahmedabad is ordered to be quashed qua the petitioner only. The second respondent will be at liberty to proceed ahead with the said criminal complaint as against the second accused shown in the said complaint. Rule is made absolute to the aforesaid extent. It is clarified that this Court does not express any opinion as to the merit and demerit of the civil dispute between the original complainant and original accused persons in the original complaint before the trial Court.

(D.P.Buch,J.)

(vipul)